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Group 2700
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In re Application of
HARVEY, JOHN C., et al.
Application No. 08/470,571
Filed: June 6, 1995
For: **SIGNAL PROCESSING APPARATUS
AND METHODS**

DECISION
ON
PETITION

This is a decision in response to the Petition to the Director under 37 CFR § 1.181 filed August 4, 2005. The petition is treated under 37 CFR § 1.181(a)(1), invoking supervisory authority of the Director.

The Petition is **GRANTED-IN-PART**.

Petitioner states that Appellant's brief was filed on February 8, 2005 and that to date, an Examiner's Answer has not been received. Petitioner requests that the Director of Patents and Trademarks ('Director') exercise his supervisory authority and issue a written Examiner's Answer in the subject application within thirty (30) days.

Petitioner's request will be treated as a request for expedited handling in accordance with MPEP §708.01.

A review of the recent file activity reveals that a final Office action was mailed on April 28, 2004, rejecting all pending claims.

On September 20, 2004, appellants filed a Notice of Appeal and a response to the outstanding final Office action.

On November 24, 2004, an Advisory Action was mailed on November 24 and supplemented on December 20, 2004.

Appellants filed a 730 page brief on February 8, 2005.

MPEP §708.01 [R-2] List of Special Cases, states in part:...

Certain procedures by the examiners take precedence over actions even on special cases. For example, all papers typed and ready for signature should be completed and mailed.

All issue cases returned with a "Printer Waiting" slip must be processed and returned within the period indicated.

Reissue applications, particularly those involved in stayed litigation, should be given priority.

Applications in which practice requires that the examiner act within a set period, such a 2 months after appellants brief to furnish the examiner's answers (MPEP § 1208), necessarily take priority over special cases without specific time limits. [emphasis added]

MPEP §1208 Examiner's Answer, states in part:
APPEAL CONFERENCE...

An appeal conference is mandatory in all cases in which an acceptable brief (MPEP § 1206) has been filed. However, if the examiner charged with the responsibility of preparing the examiner's answer reaches a conclusion that the appeal should not go forward and the supervisory patent examiner (SPE) approves, then no appeal conference is necessary...

The examiner should furnish the appellant with a written statement in answer to the appellant's brief within 2 months after the receipt of the brief by the examiner. [emphasis added]

In accordance with MPEP §§ 708.01 and 1208, the subject application should have been given precedence and action taken within two months of receipt of appellant's brief. Petitioner is correct in that a response to the brief has not yet been mailed.

Therefore, the examiner is directed to take up for action the subject application, in the appropriate order for "special" applications, as set forth and in accordance with MPEP §708.01.

The request for expedited action is Granted.

In accordance with MPEP §1208, an appeal conference is mandatory in all cases. The outcome of that conference may result in other action such as reopening of prosecution or even the allowance of the application. In addition, appellants' 730 page brief could require additional time from the examiner and/or conferees to address each of the arguments raised in appellants' brief, as compared to other typical appeal briefs, in order to insure that all issues have been properly addressed.

Therefore, regarding petitioner's request that the Office provide a written Examiner's Answer in response to Appellants 730 page brief, and to do so within thirty (30) days, is Denied. The examiner will be required to pick up the subject application for expedited processing, but will not be limited in the amount of time required to address all issues before a conference panel, or in presentation of the Office's position in an Examiner's answer, should the conference panel agree on that course of action.

In regard to petitioner's 489 page "Memorandum In Support Of Applicants' Petition To The Director Under 37 C.F.R. §1.181", this addendum to applicants' petition is dismissed as moot. As stated above, petitioner's request that the application be handled in an expeditious manner due to the submission of appellants' brief, has been granted in accordance with MPEP §708.01 and thus the various issues raised in the addendum does not provide any further relevance.

The application file will be forwarded to the examiner for action in appropriate due course as set forth above.



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